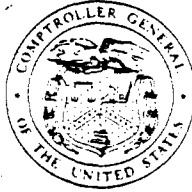


DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

510 14

FILE: B-184100

DATE: August 26, 1975

MATTER OF: Dynamic International, Inc.

97452

DIGEST:

Protest that bidders were confused as to whether to base their bids on wage determination rates included in invitation, or on wages negotiated between union and incumbent contractor subsequent to time invitation was issued, is untimely, since invitation advised bidders that collective bargaining was in process and possibility that successor contractor might have to pay wage rate other than that listed in wage determinations. Thus, basis of protest was apparent prior to bid opening and under section 20.2(b)(1) of our Bid Protest Procedures should have been lodged prior to that time rather than after bid opening.

Invitation for bids (IFB) DAGA01-75-B-0052, issued on April 4, 1975, by the United States Army Support Command, Hawaii, requested bids for the furnishing of mess attendant services at various Army installations on the islands of Oahu and Hawaii. Bid opening was originally scheduled for May 5, 1975.

The invitation, as originally issued, included Department of Labor Wage Determination Nos. 74-419 (Rev. 2) dated March 28, 1975, 71-203 (Rev. 3) dated February 12, 1975, and 71-202 (Rev. 4) dated March 25, 1975. These three wage determinations covered the four locations involved in the invitation. Additionally, as information to bidders, the invitation contained (on the face of DD Form 1707) the following statement:

"Bidders are advised that employees of current Mess Attendant Contractor are unionized. Annual Collective bargaining regarding wages, etc., is expected to be conducted during May 1975."

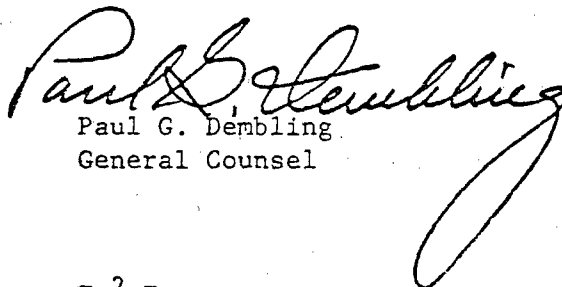
Also, Wage Determination No. 74-419 (Rev. 2) dated March 28, 1975, contained the following notation:

"Negotiations between the incumbent contractor, Dyneteria Inc., and the National Maritime Union of America are in process. Consequently, the obligations of the successor contractor under Section 4(c) of the Service Contract Act may be other than those set forth herein."

On May 5, 1975, Dyneteria, who is the current contractor at Schofield Barracks and Fort Shafter, advised the contracting officer that it had concluded negotiations with the union and furnished to him the terms of the agreement regarding wages, fringe and other benefits to be paid. By radio messages dated May 7 and 9, 1975, all bidders were advised of the terms of the agreement according to the information provided the contracting officer by Dyneteria. Also, the bid opening date was extended to May 16, 1975. On May 13, 1975, the procuring activity received a telegram from Dynamic acknowledging receipt of the May 7 and 9 messages. An amended wage determination reflecting the same information previously furnished all bidders was received on May 28, 1975, and was incorporated into the contract by modification.

By telefax message dated June 3 and letter of June 6, 1975, Dynamic lodged its protest with our Office, alleging that confusion had been created as to the applicable wage determinations for the invitation. It is Dynamic's position that this confusion has caused some bidders to submit bids based on one wage rate, while other bidders might submit their bids on the basis of another rate.

The protest to our Office was received after bid opening. Section 20.2(b)(1) of Bid Protest Procedures (40 Fed. Reg. 17979 (1975)) provides that protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening must be filed prior to that date in order to be considered by this Office. In the present case, the alleged impropriety was evident to Dynamic prior to bid opening. Therefore, this protest is untimely and will not be considered by our Office on its merits. See C. G. Ashe/Eastern Service Management Company, B-182907, March 10, 1975 (75-1 CPD 144).


Paul G. Derbling
General Counsel